IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1687 OF 2004

IN

NOTICE OF MOTION NO.3232 OF 2002

IN

SUIT NO.4667 OF 2000

Mrs.Rabia Abdul Gani ...Plaintiff

Versus

S.P.Sharma & Anr. ...Defendants

And

Ibadat Ibrahim Shaikh & Ors. ...Respondents

And

Lancy Mendonca ...Applicant

.....

Mr.Jaydeep Mitra with Mr.G.C.Mohanty for Applicant.

Mr.Harakhchand Gada with Ms.Yogini Gada i/b

M/s.Harakhchand & Co. for Defendant No.2.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 18, 2005.

P.C.

1. Heard Counsel for the parties. Perused

the pleadings and the documents on record.

2. According to the Applicant, the Applicant is in occupation of Flat No.12 on the third floor in building known as ‘Church View Apartment’ in her own rights having purchased the same from Defendant No.2 under registered Agreement for Sale dated 5th February 1983. The Applicant relies on the said Agreement as well as receipts to indicate that Applicant has made full payment towards consideration referred to in the agreement. The fact remains that the order passed by this Court on 2nd December 2002 authorising the Court Receiver to take formal possession of all the flats and galas in the suit building. That order has become final. The Notice of Motion No.3234 of 2002 has been finally disposed of by Justice D.G.Deshpande on 30th September 2004. Even this order records that the occupants of the flats are the agents of the Court Receiver and the Court Receiver has fixed ad-hoc royalty. The Court directed the Court Receiver to fix final royalty and take action against those who commit default in payment of royalty. Even this order has not been challenged

so far. From the correspondence on record, it appears that the Applicant has sent letters to the Court Receiver on 20th February 2003 claiming that she was in possession of flat No.12 and would abide by the Court Order in the pending dispute. The ad-hoc royalty has been fixed by the Court Receiver on 6th January 2004. It is seen from the communication sent by the Court Receiver dated 28th October 2004 that the Applicant paid royalty amount up to December 2002 in respect of the flat in question and remained in default since January 2003. It is in this backdrop, the Court Receiver is proceeding to take action against the Applicant. The report of the Court Receiver dated 14th February 2003 clearly mentions that the Applicant assured to produce all the relevant documents before the Court Receiver and also allowed the Court Receiver to take formal possession of the flat in question. In this backdrop, it is not possible to accede to the request of the Applicant, so as to restrain the Court Receiver from collecting the amount towards compensation of the royalty in respect of the subject flat or obtaining physical possession thereof for the default in

payment of royalty.

3. As mentioned earlier, as the orders passed by this Court dated 2nd December 2002 and 30th September 2004 have not been challenged and are allowed to become final, relief claimed in this Application ought not succeed. Hence, this Application should fail. The same is rejected.

4. At this stage, Counsel for the Applicant submits that the Applicant intends to take up the matter in appeal. To enable the Applicant to pursue remedy of appeal, Court Receiver is directed not to take precipitative action for a period of six weeks from today.

A.M.KHANWILKAR, J.